

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SPEARMAN CORPORATION
MARYSVILLE DIVISION and
SPEARMAN CORPORATION KENT
DIVISION,

Plaintiff,

v.

THE BOEING COMPANY,

Defendant.

Case No. C20-13RSM

ORDER DENYING MOTION TO
EXCLUDE CERTAIN TESTIMONY OF
BOEING PROPOSED EXPERT
LORRAINE BARRICK

I. INTRODUCTION

This matter comes before the Court on Plaintiff Spearman Corporation Marysville Division and Spearman Corporation Kent Division (“Spearman”)’s Motion to Exclude Certain Testimony of Boeing Proposed Expert Lorraine Barrick. Dkt. #131. Defendant Boeing opposes Plaintiff’s Motion. Dkt. #145. The Court has determined that oral argument is unnecessary. For the following reasons, the Court DENIES Plaintiff’s Motion to Exclude.

II. BACKGROUND

This is a contract dispute involving Spearman and Boeing. This Court has previously dismissed several of the Plaintiff’s claims, and its breach of good faith and fair dealing claim is still remaining. Dkt. #190.

1 Defendant provides Lorraine Barrick as an expert to opine on Spearman's financial
 2 conditions and analyze Boeing's counterclaim damages. *See* Dkt. #132-2. Ms. Barrick is a
 3 Certified Public Accountant, with experience in analyzing financial records and evaluating claims
 4 for financial damages. *Id.* at 8.

5 Ms. Barrick summarized her opinions as follows:

- 6 1. Spearman was losing money even before its contract with
 7 Boeing and its financial problems are not attributable to Boeing.
- 8 2. Financial statements provided to Boeing were inadequate and
 9 misrepresented Spearman's financial health.
- 10 3. Mr. Spearman comingled his personal and business assets and
 11 liabilities.
- 12 4. Boeing's damages claim includes Boeing's cost to cover undue
 13 balances for material sold to Spearman, and to cover excess
 14 costs to manufacture products internally and through other
 15 suppliers.
- 16 5. Plaintiffs' damages claims are inadequately presented.

17 *See* Dkt. #132-2 at 13.

18 **III. DISCUSSION**

19 **A. Legal Standard**

20 Federal Rule of Evidence 702 provides that a witness who is qualified as an expert by
 21 knowledge, skill, experience, training, or education may testify in the form of an opinion or
 22 otherwise if:

- 23 (a) the expert's scientific, technical, or other specialized knowledge will help the trier of
 24 fact to understand the evidence or to determine a fact in issue;
- 25 (b) the testimony is based on sufficient facts or data;
- 26 (c) the testimony is the product of reliable principles and methods; and
- 27 (d) the expert has reliably applied the principles and methods to the facts of the case.

1 Under Rule 702, the trial court acts as a gatekeeper and ensures that the proffered scientific
2 testimony meets certain standards of both relevance and reliability before it is admitted. *Daubert*
3 *v. Merrell Dow Pharm., Inc. ("Daubert I")*, 509 U.S. 579, 590, 113 S. Ct. 2786, 125 L. Ed. 2d
4 469 (1993). The party proffering expert testimony has the burden of showing the admissibility
5 of the testimony by a preponderance of the evidence. *Daubert I*, 509 U.S. at 592 n.10. "[J]udges
6 are entitled to broad discretion when discharging their gatekeeping function" related to the
7 admission of expert testimony. *United States v. Hankey*, 203 F.3d 1160, 1168 (9th Cir. 2000)
8 (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150-53, 119 S. Ct. 1167, 143 L. Ed. 2d 238
9 (1999)). The Court considers four factors to determine if expert testimony will assist the trier of
10 fact: "(i) whether the expert is qualified; (ii) whether the subject matter of the testimony is proper
11 for the jury's consideration; (iii) whether the testimony conforms to a generally accepted
12 explanatory theory; and (iv) whether the probative value of the testimony outweighs its prejudicial
13 effect." *Scott v. Ross*, 140 F.3d 1275, 1285-86 (9th Cir. 1998).

16 As an initial matter, this Court must determine whether the proffered witness is qualified
17 as an expert by "knowledge, skill, experience, training or education." Fed. R. Evid. 702. Because
18 the Rule "contemplates a *broad conception* of expert qualifications," only a "*minimal foundation*
19 of knowledge, skill, and experience" is required. *Hangarter v. Provident Life & Accident Ins.*
20 *Co.*, 373 F.3d 998, 1015-16 (9th Cir. 2004) (emphasis in original) (quoting *Thomas v. Newton*
21 *Int'l Enters.*, 42 F.3d 1266, 1269 (9th Cir. 1994)). A "lack of particularized expertise goes to the
22 weight of [the] testimony, not its admissibility." *United States v. Garcia*, 7 F.3d 885, 890 (9th
23 Cir. 1993) (citing *United States v. Little*, 753 F.2d 1420, 1445 (9th Cir. 1984)); *Daubert v. Merrell*
24 *Dow Pharm., Inc. ("Daubert II")*, 43 F.3d 1311, 1315 (9th Cir. 1995).

1 The trial court must also ensure that the proffered expert testimony is reliable. Generally,
2 to satisfy Rule 702's reliability requirement, "the party presenting the expert must show that the
3 expert's findings are based on sound science, and this will require some objective, independent
4 validation of the expert's methodology." *Daubert II*, 43 F.3d at 1316. Toward this end, the
5 Supreme Court in *Daubert I* set forth the following factors for the trial court to consider when
6 assessing the reliability of proffered expert testimony: (1) whether the expert's method, theory,
7 or technique is generally accepted within the relevant scientific community; (2) whether the
8 method, theory, or technique can be (and has been) tested; (3) whether the method, theory, or
9 technique has been subjected to peer review and publication; and (4) the known or potential rate
10 of error of the method, theory, or technique. *Daubert I*, 509 U.S. at 593-94. An expert opinion
11 is reliable if it is based on proper methods and procedures rather than "subjective belief or
12 unsupported speculation." *Id.* at 590. The test for reliability "is not the correctness of the
13 expert's conclusions but the soundness of his methodology." *Stilwell v. Smith & Nephew, Inc.*,
14 482 F.3d 1187, 1192 (9th Cir. 2007) (quoting *Daubert II*, 43 F.3d at 1318).

15 Alternative or opposing opinions or tests do not "preclude the admission of the expert's
16 testimony – they go to the *weight*, not the admissibility." *Kennedy v. Collagen Corp.*, 161 F.3d
17 1226, 1231 (9th Cir. 1998). Furthermore, "[d]isputes as to the strength of [an expert's]
18 credentials, faults in his use of [a particular] methodology, or lack of textual authority for his
19 opinion, go to the weight, not the admissibility, of his testimony." *Id.* (quoting *McCulloch v.*
20 *H.B. Fuller Co.*, 61 F.3d 1038, 1044 (2d Cir. 1995)).

21 Finally, the Court must ensure that the proffered expert testimony is relevant. As
22 articulated in Rule 702, expert testimony is relevant if it assists the trier of fact in understanding
23 evidence or in determining a fact in issue. *Daubert I*, 509 U.S. at 591. Thus, the party proffering
24

1 such evidence must demonstrate a valid scientific connection, or “fit,” between the evidence and
 2 an issue in the case. *Id.* Expert testimony is inadmissible if it concerns factual issues within the
 3 knowledge and experience of ordinary lay people because it would not assist the trier of fact in
 4 analyzing the evidence. In the Ninth Circuit, “[t]he general test regarding the admissibility of
 5 expert testimony is whether the jury can receive ‘appreciable help’ from such testimony.” *United*
 6 *States v. Gwaltney*, 790 F.2d 1378, 1381 (9th Cir. 1986). Because unreliable and unfairly
 7 prejudicial expert witness testimony is not helpful to the trier of fact, the trial court should exclude
 8 such evidence. *Jinro Am., Inc. v. Secure Invs., Inc.*, 266 F.3d 993, 1004 (9th Cir. 2001). Likewise,
 9 expert testimony that merely tells the jury what result to reach is inadmissible. Fed. R. Evid. 704,
 10 Advisory Committee Note (1972); *see, e.g., United States v. Duncan*, 42 F.3d 97, 101 (2d Cir.
 11 1994) (“When an expert undertakes to tell the jury what result to reach, this does not *aid* the jury
 12 in making a decision, but rather attempts to substitute the expert’s judgment for the jury’s”).

15 **B. Analysis**

16 Plaintiff seeks to exclude portions of Ms. Barrick’s testimony arguing that her opinions
 17 regarding Spearman’s financial status and cover damages are incomplete, irrelevant, and rely on
 18 flawed methodology. *See* Dkt. #131 at 2.

20 **1. Qualification**

21 Plaintiff argues that while Ms. Barrick has expertise in accounting principles, she does not
 22 have specific knowledge related to decision-making practices in the aerospace industry. *See* Dkt.
 23 #131 at 5. After reviewing the submitted materials, the Court finds Ms. Barrick qualified to opine
 24 regarding Plaintiff’s financial condition prior to contracting with Boeing and the counterclaim
 25 damages. Because Rule 702 contemplates a broad conception of expert qualifications, only a
 26 “minimal foundation of knowledge, skill, and experience” is required. *Hangarter, supra*. The
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1 Court's review of the attached exhibits demonstrates Ms. Barrick has the necessary foundation as
2 to this issue.

3 **2. Reliability and Relevance**

4 **i. Barrick's opinion about Spearman's financial status**

5 Plaintiff asserts that Ms. Barrick's opinion regarding Spearman's financial condition is
6 prejudicial and irrelevant. Spearman opines that Boeing chose to award the contracts in dispute
7 to Spearman—knowing about its unstable financial situation, business model, and comingling of
8 assets— simply because Spearman was offering lower prices. Thus, they argue, it is irrelevant if
9 Spearman's financials were "*really* high risk instead of just high risk." *See* Dkt. #131 at 11.
10

11 The Court disagrees. Ms. Barrick's opinions related to Spearman's financial position,
12 financial misstatements to Boeing, and comingling of assets and liabilities are relevant because
13 they relate to the outstanding claims for damages and Spearman's claim that Boeing caused its
14 financial problems. *Daubert I*, 509 U.S. at 591. As a Certified Public Accountant, Ms. Barrick
15 analyzes and summarizes Plaintiff's financial data, which will help the jury in evaluating any
16 evidence related to the outstanding claims in the case.
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19 Next Plaintiff argues that Ms. Barrick's opinions are unreliable, and her methodology is
20 flawed. They point to Barrick's deposition admissions, asserting that Ms. Barrick was neither
21 knowledgeable about Boeing's internal practices (related to contract awards), nor did she rely on
22 them in forming her opinion. *See* Dkt. #131 at 7. Plaintiff argues that Ms. Barrick ignored
23 evidence of Boeing's knowledge of Spearman's financial condition, failed to conduct a complete
24 audit of Spearman's books and records, and speculates to make Spearman's financial data worse
25 than it was. *Id.* at 8-11. Additionally, Spearman contests Ms. Barrick's methodology in valuing
26 its assets. *Id.*
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The Court will not question Ms. Barrick's use of accounting principles to assess Spearman's financials. Ms. Barrick does not appear to be basing her opinions solely on subjective belief. The parties' opposing opinions about Ms. Barrick's conclusions will also not serve as a basis to exclude opinion testimony. The alleged "flaws" all go to the weight, not admissibility of the testimony. Plaintiff is free to attack Ms. Barrick's opinion on cross-examination and make relevance objections.

ii. Barrick's opinion about "cover" damages

Plaintiff also contests Ms. Barrick's methodology in calculating damages by comparing prices for parts awarded to Spearman with those awarded to cover suppliers, opining that her underlying data was incomplete, unadjusted, and unverified. *See* Dkt. #131 at 12. The Court will not question the accuracy of Ms. Barrick's data at this stage because such challenges go to the weight, not admissibility of the testimony.

IV. CONCLUSION

Given all of the above, the Court finds no basis to exclude Ms. Barrick's testimony. Having reviewed the above Motions and the remainder of the record, the Court hereby finds and ORDERS that Plaintiff's Motion to Exclude Certain Testimony of Boeing Proposed Expert Lorraine Barrick, Dkt. #131, is DENIED.

DATED this 20th day of October 2022.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE